IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5366 of 1987
SPECIAL CIVIL APPLICATION No 5367 of 1987
AND
SPECIAL CIVIL APPLICATION No 5368 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHABHALUBHAI HATHIBHAI KHUMAN

Versus

STATE OF GUJARAT

Appearance:
MRS SANGEETA N PAHWA for Petitioner
MR PREM JOSHI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR
Date of decision: 04/02/2000

COMMON ORAL JUDGEMENT

1. All these petitions are filed by the petitioners for an appropriate writ, order or direction directing the

respondents not to terminate the services of the petitioners and to treat them as permanent government servants and grant them all benefits which have been granted to other similarly situated employees.

2. The case of the petitioners was that they were appointed as Clerks in the Office of Deputy Engineer, Sukhbhadar Irrigation Div. No.II, Botad, District Bhavnagar in 1983. They were otherwise qualified and eligible as they were continued in service since then and they were entitled to regularisation and other benefits, which were illegally and arbitrarily denied to them. They were, therefore, constrained to approach this Court.

3. It appears that initially notice was issued. The parties appeared. Matters were heard for admission and Rule was issued. Interim relief, however, was refused.

4. Today, the matters have been called for final hearing.

5. Mr. Pahwa, learned counsel for the petitioners has raised several contentions. He submitted that since all the petitioners were working for a long period, it was obligatory on the authority to regularise their services by making them permanent. He also submitted that in similar circumstances, services of the other employees were regularised. For that, the counsel made reference to one Mr. Dhirubhai B. Dorajiya, who had filed Spl.C.A. No. 5187 of 1987. The present group of petitions was ordered to be heard along with Spl.C.A. No. 5187 of 1987. In the meanwhile, however, the respondent authorities passed an order on 9th of October, 1997, by which the petitioner of Spl.C.A. No. 5187 of 1987 was taken back in service. The copy of the said

order was also placed on record at the time of hearing of this group of petitions. Mr.Phawa, therefore, submitted that all the petitioners were also required to be taken back in service and similar orders ought to have been passed in their favour as well. Mr. Phawa drew my attention to the fact that the petitioner of Spl.C.A. No. 5368 of 1987 (Chandhubha Shivubha Vaghela) and submitted that Dhirubhai B. Dorajiya was appointed on May 4, 1981 whereas Mr. Chandhubhai Shivabha Vaghela, petitioner of Spl.C.A. No. 5368 of 1987 was appointed as early as January 10, 1979, i.e. before more than two years to Mr. Dhirubhai B. Dorajiya. He, therefore,

submitted that if Dorajiya was taken back in service, it was incumbent on the part of the respondent authorities to show similar treatment to the petitioner of Spl.C.A. No. 5368 of 1987. It is further submitted that other petitioners may not be senior to Mr. Dorajiya, but they were also appointed at or about that period, and, therefore, they also should be taken back in service and all benefits should have been extended in their favour.

6. In an affidavit-in-reply filed by the Deputy Executive Engineer, Sukhbhadar Irrigation Canal, Sub-Division No.II, it was submitted that the project was for some time and the petitioners were engaged as daily wagers and, therefore, the services of the petitioners could not be regularised. It was also submitted that there was suppression of material facts on the part of the petitioners in not supplying the true and complete

facts. It was also contended that in exercise of powers conferred under Article 226 of the Constitution of India, no order of regularisation can be passed by this Court and the petitions are liable to be dismissed.

7. In the facts and circumstances of this case, in my opinion, justice would be made if the petitions are disposed of by reserving liberty to the petitioners to approach the respondents authorities and/or to approach appropriate forum if they are aggrieved by the action of the State Government or the authorities. If the petitioners make a representation to the authorities, the authorities will consider the fact that for a long time they had worked with the Department and the authorities will consider the cases of the petitioners sympathetically and will take appropriate decision. The petitioners can be said to be an "experienced hand". It is also clear that as per the statement made by the learned counsel for the petitioners in the light of the order dated 9th October, 1987, one employee was taken back in service in Sukhbhadar Canal project. The order which is produced recites two more persons were also taken back.

8. If the petitioners are aggrieved by any action taken by the authorities, it is open to them to take appropriate proceedings either in the Labour Court or in any other forum. As I am disposing these petitions only on the ground that questions of fact are involved, which

cannot be properly dealt with and decided in exercise of extraordinary jurisdiction under Article 226 of the Constitution, disposal of these petitions will not come in the way of the petitioners for getting appropriate relief in accordance with law.

9. For the foregoing reasons, all these petitions deserve to be disposed of and the same are disposed of accordingly with liberty to the petitioners to approach the authorities and also to appropriate forum. Rule is accordingly discharged with no order as to costs.

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